IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.131 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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COMMISSIONER OF INCOME-TAX - Applicant
Versus
MIHIR TEXTILES LIMITED - Respondent

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Appearance :
MS MM BHATT WITH MR MANISH R BHATT for Applicant.
NOTICE SERVED for Respondent – None Appeared.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 29/03/2006
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

The Income Tax Appellate Tribunal, Ahmedabad, has referred the following two questions for the opinion of this Court under Section 256(1) of the Income-Tax Act, 1961.

(1) Whether the Appellate Tribunal is right in law and on facts in deleting the disallowance of Rs.62,056/- being technical service fees paid to Mettur Breadsell Ltd.?

(2) Whether the Appellate Tribunal is right in law and on facts in directing the assessing officer to exclude the leave travel concession and medical insurance premium in computing the disallowance u/s. 40(c)?

2. In the course of assessment proceedings for assessment year 1985-86, the assessee claimed disallowance of Rs.62,056/- being payment made to Mettur Breadsell Limited for using trade mark “Tabilized” on the ground that it was revenue expenditure. The assessee also claimed that the amounts of leave travel concession and medical insurance premium paid by the company for the benefit of Managing Director should not be taken into consideration for the purpose of calculating disallowance under Section 40(c) of the Income-Tax Act, 1961. These two claims were rejected by the Income-Tax Officer.

3. In Appeal, CIT (Appeals) allowed the two claims advanced by the assessee. The Tribunal has upheld the order of the CIT (Appeals), giving rise to the instant reference.

4. Though the assessee is duly served, it has neither appeared through its constituted agent nor through a lawyer. This Court has heard Ms.Monaben M.Bhatt, learned counsel for the Revenue at length and considered the facts of the case.

5. The question whether the Appellate Tribunal is right in deleting the disallowance of Rs.62,056/- being technical service fees paid to Mettur Beardsell Limited will have to be considered in the light of principles laid down by this Court in **Commissioner of Income-Tax vs. Ashoka Mills Ltd., 218 I.T.R. 526.** In the said case, the assessee entered into an agreement with Mettur Beardsell Limited for user of the trade mark “Tebilized”. The agreement was only for a period of eight years and it was terminable merely on six months' prior notice which could be given by either party. The Tribunal held that the royalty paid for user of the trade mark constituted revenue expenditure. In the Reference. this Court

noticed that the assessee was carrying on business of manufacturing cloth and the process employed under the trade name “Tebilized” conferred an anti-crease property on the cloth. It was also noticed that the assessee entered into the agreements in question dated September 30, 1972 for the purpose of enabling it to carry on its business more efficiently and more profitably, while leaving the fixed capital untouched. The High Court, therefore, held that the agreement permitting the assessee to make use of the particular process and the user of the trade mark “Tebilized” did not create any asset nor did they confer any right of a permanent nature in favour of the assessee and as the payment of royalty was clearly in the course of the profit-earning process and not for acquisition of an asset or right of a permanent character, it was deductible as revenue expenditure. Having regard to the principles laid down by the High Court in above quoted decision, this Court is of the opinion that the Appellate Tribunal was justified in deleting the disallowance being technical service fees paid to Mettur Beardsell Limited. Therefore, the first question referred to this Court for the opinion will have to be answered in favour of the assessee, i.e., in the affirmative, and is accordingly answered.

6. So far as the second question is concerned, this Court finds that the amounts of leave travel concession and medical insurance premium were paid to the Managing Director by the Company. It is an admitted position that the Managing Director himself had not taken out medical insurance premium nor availed of leave travel concession on his own, but, had availed of those benefits extended by the Company. In **Commissioner of Income-Tax vs. Ambica Mills Limited, 236 I.T.R. 921,** the question whether premium paid for the policy taken out for the Managing Director would constitute benefit to the Director within the meaning of Section 40(c) of the Income-Tax Act, 1961, was considered. After reviewing the law on the question, the High Court has held as under:

> *"The question whether premium paid for the policy taken out for the managing director would constitute benefit to the director within the meaning of Section 40(c), would depend upon the nature of the policy, who had taken it out and whose obligation it was to pay the premium. If the intention of the company by taking out such policies for insuring directors against personal accident was in fact to insure itself in respect of the liability that may arise towards the director as a result of an accident, then that*

situation would be different from a director himself taking out a personal accident insurance policy under which he would be obliged to pay the premium and not the company. If such premiums are reimbursed to the director, which is an obligation of the director himself to pay and not that of the company, qua the insurance company, then that would amount to a benefit to the director within the meaning of section 40(c) of the said Act. In the present case, it was not shown that the director himself wanted to take out the policy or that it was his own obligation to pay the premium and no such contention was canvassed before the lower authority. The amount of premium was Rs.1,182 for each of the two managing directors and Rs.1,191 for the third managing director. The premiums were paid directly by the company which had taken out the policies in respect of the three directors. Therefore, the Tribunal was right in holding that the personal accident insurance premium was not meant to be a benefit or perquisite to the directors and, therefore, should not be disallowed."

Applying the ratio laid down by the Division Bench of this Court in abovereferredto decision to the facts of this case, it will have to be held that it was not shown that the Managing Director himself wanted to take out policy or avail of leave travel concession or

that it was his own obligation to pay premium. The amounts of premium and LTC availed of were directly paid by the company. Under the circumstances, this Court is of the opinion that the Tribunal was not right in directing the Assessing Officer to exclude the amounts of leave travel concession and medical insurance premium while computing disallowance under Section 40(c) of the Income-Tax Act, 1961. The second question, therefore, referred to this Court for the opinion will have to be answered in favour of the Revenue, i.e. in negative, and it is accordingly answered.

7. The Reference accordingly stands disposed of. There shall be no orders as to costs.

[J.M.Panchal, J.]

[Bankim N. Mehta, J.]

Rajendra